

MTGLQ INVESTORS, L.P.,  
Plaintiff,  
v.  
TYRONE MOWATT, and  
UNITED STATES OF AMERICA,  
Defendants.

**SAYLOR, C.J.**

The following facts are set forth as in the record and are undisputed except as noted.

Between 2013 and 2017, the United States assessed \$139,629.96 in liabilities against

Mowatt for late or unpaid income taxes plus associated penalties and interest. (Gov. Mot. (Dkt. No. 10), Ex. 1). Over that same time period, the IRS recorded four notices of federal tax liens, which totaled \$113,115.84, against the property at 27 Beechwood Drive. (*See id.*, Ex. 2).

On October 18, 2018, MTGLQ sold the property by foreclosure auction to a third-party purchaser for \$280,000. (*Id.* ¶¶ 5-6). After deduction and payment of the balance due to MTGLQ under the mortgage along with the fees and costs for the foreclosure, the remaining proceeds from the foreclosure auction were \$60,118.58. (*Id.* ¶ 7).

On May 24, 2019, MTGLQ filed this action in the Massachusetts Superior Court. The United States removed the proceeding to this Court on July 24, 2019. On December 5, 2019, the United States moved for summary judgment. The motion is unopposed.

Summary judgment is appropriate when the moving party shows that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). On an unopposed motion for summary judgment, the Court “is still bound to review the case on the merits.” *Cordi-Allen v. Halloram*, 470 F.3d 25, 28 (1st Cir. 2008).

Under 26 U.S.C. § 6321, if any person fails to pay taxes after a demand, the unpaid amount, including taxes and penalties, “shall be a lien in favor of the United States” on that person’s property. Here, the undisputed facts show that the United States held such liens on the property at 27 Beechwood Drive in the amount of \$113,115.84. Thus, it has a valid claim to recover the entire unpaid surplus, \$60,118.58. There is no evidence that any party has a superior claim to the funds. Furthermore, it is undisputed that, because the amount of the surplus will not fully satisfy the claim of the United States, none of the funds may be awarded to MTGLQ to reimburse its costs and attorney fees incurred in bringing this action. *See United States v. State Nat’l Bank of Conn.*, 421 F.2d 519, 521 (2d Cir. 1970).

For the foregoing reasons, the United States' motion for summary judgment is  
GRANTED.

**So Ordered.**

Dated: January 9, 2020

/s/ F. Dennis Saylor IV  
F. Dennis Saylor IV  
Chief Judge, United States District Court